

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CRM-M-58965-2022 (O&M)
Reserved on 02.09.2024
Pronounced on: September 04, 2024

Harmesh Kumar GabaPetitioner

vs.

Asstt. Directorate of Enforcement, Govt. of IndiaRespondents

CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MRS. JUSTICE SUDEEPTI SHARMA

Present: Mr. Vikram Chaudhary, Senior Advocate assisted by
Mr. Keshvam Chaudhary, Mr. Rishab Tewari and
Ms. Diya Bhagwan, Advocates
for the petitioner.

Mr. Arvind Moudgil, Senior Counsel for Govt of India assisted by
Ms. Jyotika Panesar, Mr. Naveen Kumar, Ms. Geetanjali Bhatia and
Ms. Jaspreet Kaur, Advocates
for the respondent/ED.

SUDEEPTI SHARMA J.

1. The petitioner has approached this Court by filing the instant 2nd petition under Section 439 of the Code of Criminal Procedure seeking his release on regular bail, in COMA 13 of 2017 dated 01.7.2017 titled as "**Enforcement Directorate Vs. Davinder Singh Nirwal and others**" arising out of ECIR/02/JLZO/2013 dated 22.01.2016, registered under Sections 3/4 of Prevention of Money Laundering Act, 2002 (herein after to be referred as "PMLA Act").
2. Learned senior counsel for the petitioner contends that since the petitioner is hardly literate and is only 3rd standard pass, he verified from the revenue authorities as to which of his properties were attached by the respondent department and came to know that two properties had no lien or charge by the Enforcement Directorate in the revenue records.



3. Learned senior counsel for the petitioner further contends that because of the financial crisis, since, the whole of the family of the petitioner was involved on account of proceedings under the PMLA Act, therefore, the petitioner disposed of part of the above two properties.

4. Learned senior counsel of the petitioner further contends that the action of the petitioner, in executing the sale deeds was absolutely ill-conceived, imprudent and careless. The petitioner in his foolish wisdom on the presumption that there is no attachment over these properties, the petitioner sold the two properties and had no *mens rea* nor any criminal mal-intention to do so.

5. Learned senior counsel for the petitioner contends that the action of the petitioner in disposing of the above two properties, though is fully ill-conceived, imprudent and careless, but at the same time, it cannot be construed as a willful and deliberate violation on his part. He further contends that the petitioner had carried out the sale under an erroneous impression. He contends that he has already filed a Civil Suit bearing No. 94 of 2021 (Annexure P-5) in the Court of Learned Additional Civil Judge (Senior Division), Phagwara, for declaration with respect to two properties sold by him, as null and void.

6. Per contra, Mr. Moudgil, learned senior counsel appearing for the respondent/ED while referring to the reply contends that the petitioner was fully aware regarding the attachment of his properties, as formal provisional attachment orders were passed and he violated the terms and conditions of the bail order dated 28.02.2017. Thus, the petitioner is not entitled for regular bail.

7. The case of the petitioner is that he is aged about 61 years and has studied only till Class 3rd from a Government School. He is an agriculturist by profession and his family *inter alia* comprises of his wife and three children i.e. one daughter and two sons. On 25.03.2013, ECIR No. 02/JLZO/2013 was



registered by the Respondent Department on the basis of FIR No. 45 dated 3.03.2013 registered under Sections 21/61/85 of NDPS Act, 1985, Sections 420, 467 468, 471 of IPC and Sections 25/54/59 Arms Act, registered at P.S. Fatehgarh Sahib.

8. Thereafter, FIR No. 92 dated 3.6.2014 was registered U/s 21, 22, 25, 25-A, 27, 29, 61, 85 of NDPS Act and 25, 54, 59 of Arms Act at P.S. Passiana, District Patiala. During the investigations under PMLA, the said FIR No. 92 as well as 7 other FIRs were taken up together as one composite case for investigation under the PMLA by the Respondent Department on the premise that some of the accused in the said FIR's were common and alleged transactions were inter-connected.

9. Further, the case of the petitioner is that he is neither an accused nor is in any way involved with the afore-stated FIRs. On 7.7.2014 & 21.9.2015, petitioner was also called by the ED in terms of Section 50 of PMLA and his statements were duly recorded. In the 3rd Supplementary Complaint filed by the ED on 22.1.2016, petitioner, his son Khushant Gaba and his wife Smt. Sudesh Rani were arraigned as accused No. 9, 10 and 12 respectively. The petitioner is not an accused in any of the above FIRs but his brother Chunni Lal Gaba was arraigned as accused in the above FIR No. 92 dated 3.06.2014. However, he (Chunni Lal Gaba) was acquitted by this Court vide Judgment dated 13.2.2019.

10. Vide order dated 27.1.2016, the Special Judge (under PMLA), Patiala took cognizance of the complaint and proceeded to summon the petitioner. Apprehending his arrest, the petitioner filed an application for pre-arrest bail before the Special Judge (under PMLA), Patiala and vide order dated 12.8.2016, his application was dismissed.



11. The petitioner then approached this Court vide CRM-M-42455-2016 seeking the relief of pre-arrest bail. Vide order dated 28.2.2017 (Annexure P-1), this Court was pleased to admit the petitioner to pre-arrest bail by imposing the following conditions:-

(i) the applicant shall not leave the country without prior permission of the Special Court or this Court;

(ii) the applicant shall continue to appear before the Special Court and shall not hamper the ongoing trial;

(iii) the applicant shall continue to avail the concession of bail subject to the attachment/seizure of his immovable properties already identified by the Enforcement Directorate;

(iv) the learned Special Judge shall ensure that in this case no order to release the attached properties is passed;

(v) the applicant shall also abide by such other conditions as may be imposed by learned Special Judge while accepting his bail bonds."

12. It is an admitted fact on record that in terms of Section 5 of PMLA Act, the Provisional Attachment Order was passed, wherein, properties of the petitioner were provisionally attached. The said Provisional Attachment order was confirmed by the Adjudicating Authority and the matter is now pending before the Appellate Tribunal.

13. On 21.10.2020, an application was filed by the Directorate of Enforcement for cancellation of his bail on the ground that he had violated the conditions on which anticipatory bail was granted to the petitioner by this Court as also that the properties which were provisionally attached by the Enforcement Directorate stood confirmed by the Adjudicating Authority.

14. After this, the Enforcement Directorate got made the relevant endorsements/entries in the revenue record. On 30.10.2020, another application



was moved by the Enforcement Directorate seeking forfeiture of bail bonds and surety furnished by the petitioner. On 10.11.2020, a reply was filed by the petitioner to the aforesaid two applications filed by the Enforcement Directorate for cancellation of bail and forfeiture of bail bonds. In the reply, he stated that he is not well versed with the English language as he has just studied till Class 3rd and the properties were sold by him only after checking the revenue records and since these properties were not mentioned in the revenue records, petitioner was under the impression that the same were not attached by the Enforcement Directorate.

15. After considering the reply, vide order dated 1.12.2020 (Annexure P-2), the pre-arrest bail granted by this Court was cancelled by the trial Court on the ground that the petitioner was well aware that the two properties were also attached by ED, as he had filed an appeal before the Appellate Authority and the properties were mentioned therein at Sr. No. 15 & 16.

16. Vide another order dated 8.1.2021 (Annexure P-3), the trial Court proceeded to issue Non-Bailable Warrants of arrest against the petitioner. The Trial Court proceeded to declare him proclaimed offender. Subsequently, the petitioner was declared proclaimed offender on 25.05.2021. The petitioner then filed a petition bearing No. CRM-M-3510-2021 before this Court challenging the cancellation of his bail and the same was withdrawn by him on 16.07.2021 (Annexure P-4). Subsequently, on 19.7.2021, the petitioner surrendered and sought regular bail before the Court below.

17. The petitioner also approached this Court, vide CRM-M-30946-2021 seeking regular bail, which was dismissed, vide order dated 07.03.2022. The petitioner challenged the rejection order dated 07.03.2022 before Hon'ble the Supreme Court, by filing SLP (Crl) 5467-2022, which was disposed of on 30.05.2022 and the following order was passed.



“Permission to file Special Leave Petition is granted.

Learned senior counsel for the petitioner after arguing for some time seeks liberty to withdraw the special leave petition with further liberty to approach the High Court after six months.”

18. Now the petitioner has again approached this Court seeking grant of regular bail.

19. On notice, a reply dated 09.03.2023 has been filed by the respondent stating therein that the first regular bail of the petitioner has been rightly rejected by this Court on 07.03.2022. The relevant portion of the order reads as under:-

From the discussion made hereinabove, this Court is of the conclusive view that the petitioner not only violated the terms and conditions stipulated in his bail order dated 28.02.2017 passed in CRM-M-42455 of 2016 but also dared to stay away from Court for creating hindrance in furtherance of justice. There is a serious and justified apprehension that if such concession is granted to the petitioner again, as prayed in the present petition, he would again violate the conditions whatsoever and may also thwart the process of trial.

Hence the petition is devoid of merits and we, thus dismiss the same.”

20. The reply further stated that the petitioner is not entitled to seek any discretionary relief of provisions of Cr.P.C without fulfilling the twin conditions as laid down under Section 45 of PMLA Act, 2002. The reply further states that the petitioner was granted pre-arrest bail by this Court on 28.02.2017 in CRM-M-42455-2016, wherein this Court had directed that ***"the petitioner shall continue to avail the concession of bail subject to the attachment/ seizure of his immovable properties already identified by the Enforcement Directorate and that he shall not hamper the ongoing trial"***



21. The petitioner misused the concession of pre-arrest bail and disregarded the directions of this Court and sold 2 properties measuring total area of more than 14 Kanal land, situated in Hadiabad area of Phagwara in the year 2018 and 2019, which were under attachment of the Office of Enforcement Directorate in PAO No. 04/2015 dated 17.12.2015.

22. The reply further states that FIR has also been registered on 29.06.2021 by the Police Authorities of Kapurthala against the petitioner/accused and the concerned Revenue Officials on the basis of complaint filed by the Directorate of the Enforcement for selling of the aforesaid 2 properties by him in connivance with the Revenue Officials.

23. Subsequent thereto, the concerned Tehsildar moved an application for his anticipatory bail in the Punjab Police case, before the Court of Additional Sessions Judge, Kapurthala, which was dismissed by the Court on 13.07.2021.

24. The reply further states that another accused of this case/family member of petitioner/accused, namely Gurjit Kumar Gaba S/o Chunni Lal Gaba has already been convicted by the Special Court (NDPS) with a sentence to undergo rigorous imprisonment of 10 years/ to pay fine of Rs. 1,00,000/- u/s 21 of the NDPS Act and rigorous imprisonment of one year and fine of Rs. 20,000/- u/s 25-A of NDPS Act, vide judgment of conviction and order of sentence dated 13.2.2019 passed in NDPS RT No. 22/22.07.2013/01.07.2017, CIS No. NDPS 118/2018.

25. It is further stated in the reply that one of the co- accused and brother of the petitioner/accused, Chunni Lal Gaba had already created a lot of hurdles in the cause of justice as he had willfully evaded the process of law during the course of trial in COMA No. 13/2016 since year 2016 till he surrendered before the trial Court on 24.01.2020, which delayed the framing of charges in the instant case.



26. The reply further states that an application was moved by the petitioner for grant of his regular bail in the Special Court (PMLA), Mohali on 19.07.2021. However, the Special Court (PMLA), Mohali dismissed the application filed by the petitioner on 30.07.2021.

27. We have heard learned counsel for the parties and perused the whole record of the case.

CONCLUSION

28. A perusal of the record shows that the only plea taken by the petitioner in the whole petition is that the petitioner has no intentions to violate the conditions stipulated in the order dated 28.02.2017 passed in CRM-M-42455-2016. The petitioner submits that he is hardly literate and is only Class 3rd pass.

29. The above plea taken by the petitioner is not believable and is not credible, since sequence of events mentioned above shows the conduct of the petitioner. Had he genuinely been unaware of the conditional order issued by this Court on 28.02.2017, when pre-arrest bail was granted to the petitioner, he would have sold the entire property.

30. A bare perusal of the record would reveals that the Provisional Attachment Order No. 04/2015 was passed on 17.12.2005 wherein the identified properties to be attached were specifically mentioned. Subsequently, the petitioner was issued the notice to evict the properties under sub section 4 of Section 8 of PMLA Act. The record further reveals that the petitioner filed an appeal against the attachment order wherein the properties are mentioned. Thus, the petitioner was well aware of all the properties, which were attached by the Enforcement Directorate including the one which he has now sold. Thus, he cannot take the plea of ignorance due to illiteracy.

31. This Court is of the view that the petitioner has willfully violated the conditions stipulated in the order dated 28.02.2017 passed in CRM-M-42455-2016. He was also declared a Proclaimed Offender on 28.05.2021. There are serious allegations against the petitioner and if the concession of regular bail is granted to him, there is an apprehension that he would again violate the conditions and will try to hamper the trial as well. Also the 2nd regular bail petition filed by the petitioner is not maintainable, since no new exculpatory facts have arisen but a perusal of reply dated 09.03.2023 shows that there are inculpatory facts.

32. In view of the above, the regular bail petition is dismissed being devoid of any merit.

(SURESHWAR THAKUR)
JUDGE

(SUDEEPTI SHARMA)
JUDGE

September 04, 2024
G Arora

Whether speaking/reasoned : Yes
Whether reportable : Yes